

BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
SUMMARY SHEET
November 9, 2006

☒ ACTION/DECISION
☐ INFORMATION

I. TITLE: Proposed Amendment of R.61-79, Hazardous Waste Management Regulations
Published in the Federal Register between July 1, 2004, and August 5, 2005
Adoption to Reflect Relaxed Federal Regulations; Requires Legislative Review

II. SUBJECT: Request Initial Approval to Publish a Notice of Proposed Regulations in the State Register to Provide Opportunity for Public Comment and to Conduct a Staff Informational Forum

III. FACTS:

(1) The federal equivalent to R.61-79 is amended periodically. The State is required to adopt certain federal amendments to maintain authorization by the United States Environmental Protection Agency for the South Carolina Hazardous Waste Management Program. This amendment reflects relaxation of federal treatment of recyclable mercury-containing equipment, which the U. S. Environmental Protection Agency encourages states to adopt, although states are not required to do so. Legislative review will be required because adoption is optional.

(2) The United States Environmental Protection Agency (EPA) promulgates amendments to 40 CFR 260, 261, 264, 265, 268, 270 and 273 periodically. Recent federal amendments provide for the modification of the Universal Waste program to include mercury-containing equipment destined to be recycled. This rule was published at 70 FR 45508 on August 5, 2005.

(3) A Notice of Drafting for the proposed amendments was published in the State Register on May 26, 2006. Notice was also published on the Department's Regulatory Information Internet site in its monthly Regulation Development Update, and on the DHEC Land and Waste Management Internet site. No comments were received. See Discussion and Table of Proposed Revisions below and Statement of Need and Reasonableness, Attachment A. The Notice of Drafting included the consideration of adoption of new alternative methods rules. The Department must postpone adoption of the methods rule because of staff and budget limitations at this time.

(4) The proposed amendments have been reviewed internally by appropriate staff.

(5) A Table of Revisions is submitted as Attachment B; the Draft State Register Notice of Proposed Regulations is submitted as Attachment C; the State Register Notice of Drafting published May 26, 2006, is submitted as Attachment D, and the Text of the provisions to be revised is submitted as Attachment E.

(6) Staff is requesting the Board grant initial approval to publish a Notice of Proposed Regulation in the State Register to provide opportunity for public comment and conduct a staff informational forum. If approved by the Board, a Notice of Proposed Regulations would be published in the State Register on November 24, 2006; a staff informational forum would be conducted on Thursday, January 4, 2007 at 10:00 am in room 1043 at the Stern Business Center, Suite 102, at 8911 Farrow Road, Columbia SC; and a public hearing before the Board would be scheduled for February 8, 2007, at the Board's regularly scheduled meeting. The amendments would become effective after review by the General Assembly.

IV. ANALYSIS:

Adoption of the proposed amendments will reflect relaxed federal requirements. See Attachment A, Statements of Need and Reasonableness and Rationale, for details.

V. RECOMMENDATION:

Bureau staff recommends that the Board grant initial approval to publish a Notice of Proposed Regulations in the State Register, to provide opportunity for public comment, to conduct a staff informational forum to receive and consider comments, and to allow staff to proceed with a public hearing before the Board.

Submitted by:

Approved by:

Patrick T. Walker,
Bureau Chief
Bureau of Land and Waste Management

Robert W. King Jr. P.E.
Deputy Commissioner
Environmental Quality Control

Attachments: A. Statements of Need and Reasonableness and Rationale
 B. Table of Revisions to R.61-79
 C. Draft State Register Notice of Proposed Regulations
 D. State Register Notice of Drafting, published May 26, 2006
 E. Text of Proposed Amendments to R.61-79

ATTACHMENT A
STATEMENT OF NEED AND REASONABLENESS
Proposed Amendment of R.61-79
Hazardous Waste Management
November 9, 2006

This Statement of Need and Reasonableness complies with S. C. Code Ann. Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Proposed amendment of R.61-79 Hazardous Waste Management Regulations.

Purpose: The purpose of this amendment is to maintain State consistency with relaxed regulations of the United States Environmental Protection Agency (EPA), which promulgated an amendment to 40 CFR 260, 261, 264, 265, 268, 270 and 273 on August 5, 2005, by publication in the Federal Register.

Legal Authority: South Carolina Hazardous Waste Management Act, S. C. Code Ann. Section 44-56-10 et seq. (2002 & Supp. 2005) and Section 44-56-30.

Plan for Implementation: Upon final approval by the Board of Health and Environmental Control, review by the General Assembly, and publication in the State Register as a final regulation, amended regulations will be provided in hard copy and electronic formats to the community at cost through the Department's Freedom of Information Office and at the Bureau web site.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: The mercury amendment enables relaxed storage requirements for generators to encourage the recycling of mercury-containing equipment by including mercury products in the Universal Waste Rule and facilitating its removal from the environment. This rule reflects relaxed current federal standards.

DETERMINATION OF COSTS AND BENEFITS: In amending the Federal regulations EPA has estimated the costs and benefits of the amendments as summarized below. The summaries are taken from the cited Federal Register notices. A significant regulatory action is defined as one that (5/26/98 in 63 FR 28630) "is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements...; or (4) raise novel legal or policy issues arising out of legal mandates... The inclusion of mercury-containing equipment in the Universal Waste Rule will save costs to generators, particularly for storage. It will also assist the State as well as public and private generators of mercury-containing equipment to recycle and avoid landfill disposal and its subsequent problems. There will be a small cost savings to generators, and its political subdivisions to facilitate recycling of mercury-containing equipment. EPA estimated cost savings to generators of mercury-containing equipment to be about \$106 per generator per year.

UNCERTAINTIES OF ESTIMATES: No known uncertainties.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: Regulating spent mercury-containing equipment as a universal waste will lead to better management of this equipment and will facilitate compliance with hazardous waste management requirements, preventing these items from entering municipal trash and thereby reducing emissions of mercury to the environment.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: Less incentive to recycle mercury containing equipment, resulting in higher mercury content in municipal solid waste streams and waters of the state.

PRELIMINARY FISCAL IMPACT STATEMENT: There will be a slight saving to generators, including the state and its political subdivisions, to facilitate recycling of mercury-containing equipment. EPA estimated cost savings of about \$106 per generator.

STATEMENT OF RATIONALE: This amendment reflects relaxation of current federal requirements, which the EPA encourages states to adopt, although states are not required to do so. Mercury-containing equipment was added to the universal waste rule to provide flexibility for its management so that it may be collected and recycled rather than handled as municipal trash or tested prior to hazardous waste disposal. This amendment continues to protect human health and the environment.

ATTACHMENT B
TABLE OF REVISIONS TO R.61-79, Hazardous Waste Management
November 9, 2006

Revisions are made to conform R.61-79 to reflect relaxed federal amendments to 40 CFR 260 through 273 as of August 5, 2005.

SECTION of R.61-79	REVISIONS
260.10 Definitions	Mercury Rule: Replace "Universal Waste"; add "Mercury-containing equipment"
261.9(c)	Mercury Rule: Revise (c)
264.1(g)(11)(iii)	Mercury Rule: Revise (iii)
265.1(c)(14)(iii)	Mercury rule: Revise (iii)
268.1(f)(3)(iii)	Mercury Rule: Revise (iii)
270.1(c)(2)(viii)(C)	Mercury Rule: Revise (C)
273.1(a)(3)	Mercury Rule: Revise (a)(3)
273.4	Mercury Rule: Revise leadin, (a), (b), and (c)
273.9	Mercury Rule: Add definitions for Ampule, Mercury-containing equipment; revise definitions for Large Quantity Handler, Small Quantity Handler, and Universal Waste
273.13	Mercury Rule: Revise (c)
273.14(d)(1) and (2)	Mercury Rule: Revise (d)
273.32	Mercury Rule: Revise (b)(4) and (5)
273.33	Mercury Rule: Revise (c), (1) and (2); add (3), revise (4)
273.34	Mercury Rule: Remove (d); add new (d)(1) and (2)

ATTACHMENT C
DRAFT STATE REGISTER NOTICE OF PROPOSED REGULATIONS
Document No. ____
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: S.C. Code Ann. Section 44-56-30 (2002)
November 9, 2006

R.61-79. Hazardous Waste Management Regulations

Preamble:

The Department is proposing to amend R.61-79 in order to adopt a federal rule that facilitates the recycling of mercury by including mercury-containing equipment as part of the Universal Waste Rule at R.61-79.273. This rule was published in the Federal Register at 70 FR 45507 on August 5, 2005. This rule relaxes current regulation. Legislative review of this proposed provision will be required.

The United States Environmental Protection Agency (EPA) has promulgated amendments to 40 CFR 260 261, 264, 265, 268, 270 and 273 throughout the last calendar year. Recent federal amendments support mercury recycling.

A Notice of Drafting for the proposed amendment was published in the State Register on May 26, 2006. Notice was also published on the Department's Regulatory Information Internet site in its monthly Regulation Development Update, and on the DHEC Land and Waste Management Internet site. No comments were received. See Discussion and Table of Proposed Revisions below and Statement of Need and Reasonableness, Attachment A.

The Notice of Drafting also included the consideration of adoption of new alternative methods rules. The Department must postpone adoption of the methods rule because of staff and budget limitations at this time.

Discussion of Proposed Revisions:

[The Table of Revisions is submitted as Attachment B, and is omitted here to conserve space in the Board agenda item.]

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control invite interested members of the public and regulated community to attend a staff-conducted informational forum to be held on Thursday, January 4, 2007 at 10:00 am. in room 1043 at the Stern Business Center, Suite 102, at 8911 Farrow Road in Columbia. The purpose of the forum is to answer questions and to receive public comments from interested persons on the proposed amendment of R.61-79. Relevant comments received at the informational forum shall be submitted in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing noticed below. Information or copies of the proposed text for public notice and comment may be obtained at <http://www.scdhec.gov/lwm/html/public.html> or by calling Carolyn McLaughlin at (803) 896-4254.

Notice of Public Hearing and Opportunity for Public Comment Pursuant to S.C. Code Ann. Sections 1-23-110 and 1-23-111:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendments of R.61-79 at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on February 8, 2007. The public hearing will be held in the Board Room of the Commissioner's Suite, third floor, Aycock Building of the Department of Health and Environmental Control (DHEC) at 2600 Bull Street, Columbia, S.C. The Board meeting commences at 10:00 a.m., at which time the Board will consider items in the order presented on its agenda. The Board's agenda will be published by the Department 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed regulation by writing to David Scaturo, Manager of Corrective Action Engineering, Division of Waste Management, 2600 Bull Street, Columbia SC 29201. Written comments must be received by January 4, 2007, the close of the public comment period. Comments received by the deadline shall be considered by staff in formulating the final proposed regulation for public hearing noticed above. Relevant comments received by the deadline shall be submitted in a summary of Public Comments and Department Responses for the Board at the public hearing.

Information or copies of the proposed text for public notice and comment may be obtained at <http://www.scdhec.gov/lwm/html/public.html> or by calling Carolyn McLaughlin at (803) 896-4254.

Preliminary Fiscal Impact Statement:

There will be minimal cost saving to the state and its political subdivisions to facilitate recycling of mercury-containing equipment. See Statement of Need and Reasonableness.

ATTACHMENT D
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: S.C. Code Ann. Section 44-56-30 (2002)

R.61-79. Hazardous Waste Management Regulations

Notice of Drafting:

The South Carolina Department of Health and Environmental Control proposes to amend Regulation 61-79, Hazardous Waste Management Regulations. The purpose of this notice is to replace and supercede the Notice of Drafting that was published in the State Register January 27, 2006, and invite interested persons to present their views in writing to David Scaturo, Division of Waste Management, Bureau of Land and Waste Management, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received no later than 5:00 p.m. on Monday June 26, 2006, the close of the drafting comment period.

Synopsis:

The Department is proposing to amend R.61-79 in order to adopt two federal rules. One facilitates the recycling of mercury by including mercury-containing products as part of the Universal Waste Rule at R.61-79.273. This rule was published in the Federal Register at 70 FR 45507 on August 5, 2005. In addition, the Department is proposing to adopt a new federal Methods Rule, which will provide for the use of a broader selection of professionally peer-reviewed methods for testing. This rule was published in the Federal Register at 70 FR 34538 on June 14, 2005, with a Final Update published at 70 FR 44150 on August 1, 2005. Each of these rules relaxes current regulation.

Legislative review of these proposed provisions will be required.

ATTACHMENT E
TEXT OF PROPOSED AMENDMENTS TO
R.61-79, Hazardous Waste Management
November 9, 2006 (to be published November 24, 2006)

Text of Proposed Amendment for Public Comment:

The following sections have been added, deleted, or revised. All other sections of R.61-79 will remain. Deleted text is indicated by ~~strikeout~~; new text is indicated by underlining.

Revise 260.10 definitions to read:

260.10 Definitions:

Mercury-containing equipment means: a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function

Universal Waste means: any of the following hazardous wastes that are managed under the universal waste requirements of 273:

- (3) Mercury-containing equipment ~~Thermostats~~ as described in 273.4; and

Revise 261.9(c) to read:

261.9 Requirements for Universal Waste

- (c) ~~Thermostats~~ Mercury-containing equipment as described in 273; and

Revise 264.1(g)(11)(iii) to read:

264.1(g)(11)(iii) ~~Thermostats~~ Mercury-containing equipment as described in 273.4; and

Revise 265.1(c)(14)(iii) to read:

265.1(c)(14)(iii) Mercury-containing equipment ~~Thermostats~~ as described in 273.4; and

Revise 268.1(f)(3)(iii) to read:

268.1(f)(3)(iii) Mercury-containing thermostats equipment as described in 273.4; and

Revise 270.1(c)(2)(viii)(C) to read:

270.1(c)(2)(viii)(C) Mercury-containing equipment ~~thermostats~~ as described in 273.4; and

Revise 273.1(a)(3) to read:

273.1(a)(3) Mercury-containing equipment ~~thermostats~~ as described in 273.4; and

Revise 273.4 leadin, (a), (b) and (c) to read:

273.4 Applicability Mercury-containing equipment ~~thermostats~~.

(a) Mercury-containing equipment ~~thermostats~~ covered under this part 273. The requirements of this part apply to persons managing mercury-containing equipment ~~thermostats~~, as described in 273.9, except those listed in paragraph (b) of this section.

(b) ~~Mercury-containing equipment thermostats~~ not covered under this part 273. The requirements of this part do not apply to persons managing the following mercury-containing equipment thermostats.

(1) ~~Thermostats~~ Mercury-containing equipment that is ~~are~~ not yet a waste under part 261 of this chapter. Paragraph (c) of this section describes when mercury-containing equipment thermostats becomes a waste;

(2) ~~Thermostats~~ Mercury-containing equipment that are ~~is~~ not a hazardous waste. Mercury-containing equipment thermostats are ~~is~~ a hazardous waste if it exhibits one or more of the characteristics identified in part 261, subpart C or is listed in part 261, subpart D; and

(3) Equipment and devices from which the mercury-containing components have been removed.

(c) Generation of waste ~~a used thermostat~~ mercury-containing equipment.

(1) ~~A Used thermostat~~ mercury-containing equipment becomes a waste on the date it is discarded ~~(e.g., sent for reclamation).~~

(2) ~~Unused thermostat~~ mercury-containing equipment becomes a waste on the date the handler decides to discard it.

Revise 273.9 add definitions for Ampule, Mercury-containing equipment; revise definitions for Large Quantity Handler, Small Quantity Handler, and Universal Waste to read:

273.9 Definitions

Ampule means an airtight vial made of glass, plastic, metal, or any combination of these materials.

Large Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, ~~thermostats~~, mercury-containing equipment, or lamps, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000 kilogram limit is met or exceeded ~~accumulated~~.

Mercury-containing equipment means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, ~~thermostats~~, mercury-containing equipment, or lamps, calculated collectively) at any time.

Universal Waste means any of the following hazardous wastes that are subject to the universal waste requirements of part 273:

- (1) Batteries as described in 273.2
- (2) Pesticides as described in 273.3
- (3) ~~Thermostats~~ Mercury-containing equipment as described in 273.4; and
- (4) Lamps as described in 273.5.

Revise 273.13(c) to read:

273.13 Waste management

(c) ~~Universal waste thermostats~~ Mercury-containing equipment. A small quantity handler of universal waste must manage universal waste ~~thermostats~~ mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must ~~contain~~ place in a container any universal waste ~~thermostat~~ mercury-containing equipment with non-contained elemental mercury or that

shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions ~~in a container~~. The container must be closed, structurally sound, compatible with the contents of the ~~thermostat, and device~~, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste ~~thermostats~~ mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules; from ~~the~~ that containment device to a container that meets the requirements of 262.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 262.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; ~~and~~

(3) ~~(4)~~ A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4) (i) A small quantity handler of universal waste who removes mercury-containing ampules from ~~thermostats~~ mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks ; and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining ~~thermostat units~~) mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste ~~exhibit~~ exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it ~~is subject to~~ in compliance with part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

Revise 273.14(d)(1) and (2) to read:

273.14 Labeling/markings.

(d) (1) Universal waste ~~thermostats~~ mercury-containing equipment (i.e., each ~~thermostat~~ device), or a container in which the ~~thermostats are~~ equipment is contained, must be labeled or marked

clearly with any ~~one~~ of the following phrases: "Universal Waste - Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(2) ~~A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste - Waste Mercury Thermostat(s)," or "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."~~

Revise 273.32(b)(4) and (5) to read:

273.32 Notification.

(b) This notification must include: ***

(4) ~~A list of all of the types of universal waste managed by the handler (e.g., batteries, pesticides, thermostats, mercury-containing equipment, and lamps); and~~

(5) ~~A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time and the types of universal waste (e.g., batteries, pesticides, thermostats, lamps) the handler is accumulating above this quantity. (8/00).~~

Revise 273.33(c), (1) and (2); add (3), revise (4)

273.33 Waste management.

(c) ~~Universal waste thermostats; Mercury-containing equipment.~~ A large quantity handler of universal waste must manage universal waste ~~thermostats~~ mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) ~~A large quantity handler of universal waste must contain place in a container any universal waste thermostat mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.~~

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste ~~thermostats~~ mercury-containing equipment provided the handler:

(i) ~~removes~~ Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) ~~removes~~ Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) ~~ensures~~ Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks ~~from of~~ broken ampules; ~~from the that~~ containment device to a container that meets the requirements of 262.34;

(iv) ~~immediately~~ Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 262.34;

(v) ~~ensures~~ Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) ~~ensures~~ Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) ~~stores~~ Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) ~~packs~~ Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; ~~and~~

(3) ~~(4)~~ A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4) (i) A large quantity handler of universal waste who removes mercury-containing ampules from ~~thermostats~~ mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in part 261, subpart C:

** (A) ~~Mercury~~ Mercury or clean-up residues resulting from spills or leaks ; and/or

(B) ~~other~~ Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining thermostat units) mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste ~~exhibit~~ exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and ~~is subject to~~ must manage it in compliance with part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations ~~273.34 Labeling/markin~~g. **

Remove 273.34(d); add new (d)(1) and (2) to read:

273.34 Labeling/markin

(d) (1) Mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

~~(d) Universal waste thermostats (i.e., each thermostat), or a container or tank in which the thermostats are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste Mercury Thermostat(s)," or "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."~~